DOCUMENT RESUME

ED 425 126 SP 038 202

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TITLE School Choice and Privatization Efforts: A Legislative Survey.
INSTITUTION American Association of Colleges for Teacher Education, Washington, DC.
ISBN ISBN-0-89333-171-6
PUB DATE 1998-10-05
NOTE 13p.
AVAILABLE FROM AACTE Publications, 1307 New York Avenue, N.W., Suite 300, Washington, DC 20005-4701.
PUB TYPE Reports - Research (143)
EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Charter Schools; *Educational Legislation; Educational Vouchers; Elementary Secondary Education; Parent Participation; *Private School Aid; Public Schools; *School Choice; State Legislation; *Tax Credits
IDENTIFIERS Arizona; Colorado; Utah; Virginia

ABSTRACT

Recently, legislators have become interested in school privatization as a tool to increase educational choices, introducing more than 400 bills related to privatization during the 1998 session. The education privatization movement is a compilation of many different efforts to expand the role of private schools in education. The efforts include using public funds directly through grants or scholarships, and indirectly through tax incentives. Through a survey of legislation and a review of available literature, this paper details the current state of privatization efforts. Data collection included a search of the StateNet database (a private database of all bills introduced during the current session in every state legislature and Congress). The search turned up 452 bills related to choice, vouchers, tax credits, and charter schools. The bills identified were categorized by reform, content, sponsor, sponsor's party affiliation, party control of legislature and governor's office, and final status (passed, failed, or vetoed). This report presents an overview of the legislation, then offers case examinations from Arizona, Colorado, Utah, and Virginia. An appendix defines relevant terms. (Contains 47 references.) (SM)

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School Choice and Privatization Efforts: A Legislative Survey

An Issue Paper by:

Dan Laitsch

October 5, 1998

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SP038202

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AACTE Issue Papers are supported by contributions from the Association of Independent Liberal Arts Colleges for Teacher Education, the Association of Colleges and Schools of Education in State Universities and Land-Grant Colleges and Affiliated Private Universities, and the Teacher Education Council of State Colleges and Universities. Support for the data collection referenced in the paper was provided in part by a grant from the Ford Foundation.

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AACTE Publications
1307 New York Avenue, NW
Suite 300
Washington, DC 20005-4701

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Printed in the United States of America

International Standard Book Number (ISBN): 0-89333-171-6

School Choice and Privatization Efforts in the States: A Legislative Survey

The highly publicized failure of prospective teachers on the Massachusetts Teachers Test, as well as the poor performance of American students on international tests such as the Third International Mathematics and Science Study (TIMSS), have continued to fuel concerns about the quality of the nation's public education system. Since the 1983 report, *A Nation at Risk*, the performance of public schools has been increasingly scrutinized, and a variety of reforms designed to boost student achievement have been debated and enacted. Among the many reforms discussed, much attention has been focused on the idea of increasing educational choice and competition. Recently, legislators have become particularly interested in school privatization as a tool to increase educational choices, introducing more than 400 bills related to privatization during the 1998 session (search of the StateNet legislative database, August, 1998).

The education privatization movement is a compilation of many different efforts to expand the role of private schools in education. These efforts include using public funds both directly, through grants or scholarships, and indirectly, through tax incentives. There are also efforts to privatize education without using public money by using private funds held in trust to provide scholarships to students attending non-public schools. A number of challenges to publicly supported privatization efforts have been made through the court system, and though the U.S. Supreme Court has yet to directly rule on the constitutionality of school privatization, several cases are making their way through the state and federal systems, increasing the liklihood that the Supreme Court will hear a case within the next year.

Through a survey of legislation and a review of available literature, the current state of privatization efforts are detailed in this paper. Because the privatization movement is a broad one, with many interested parties, a variety of terms and definitions have evolved. Definitions of these terms as used in this paper are included in the Appendix.

Background

The primary methods for increasing parental choice in education through privatization are charter schools, tuition vouchers and scholarships, and education tax credits. These mechanisms transfer funding or governance or both from traditional public school structures to private organizations or alternative public entities. Tuition vouchers and scholarships, such as found in the Milwaukee Parental Choice Program, typically allocate a specified amount of money to parents for tuition payments used for the education of their children. The money may be used for tuition at public schools, charter schools, or private schools (usually secular). In the case of the Milwaukee Parental Choice Program, the money may also be used to pay for tuition at nonsecular religious schools (Steinmetz, 1998).

Education tax deductions and credits serve much the same purpose; however, rather than allocating money directly to parents, tax burdens of parents are lowered through deductions or credits for education expenses, including tuition. In 1997, Arizona enacted a law that provides a $500 tax credit for donations to scholarship funds. If it survives legal challenges, the law is expected to generate millions of dollars in scholarship money which could allow as many as 16,000 students to attend private schools (Lake, 1998). A similar bill in Illinois was vetoed by Governor Jim Edgar (Shokraii & Youssef, 1998). In Colorado, an amendment to the state constitution that would allow tax credits has been placed on the November 3 ballot. If it passes, parents of children transferring to private schools and home schools could become eligible for a significant tax credit.

Charter school laws transfer school governance away from the traditional school bureaucracy, often by creating a state chartering agency or by allowing state departments of education or local school boards to issue school charters. These charters usually include specific educational outcome goals that the school must achieve if the charter is to be renewed, and the initial charters are typically granted in three to five year blocks. In many states with charter laws, grants and charter-specific funding opportunities are awarded in addition to per-pupil funding (which often follows students who leave a traditional public school to attend a charter school). This has led to the perception by some educators and legislators that charter schools use more than their fair share of education resources, leaving significantly less for traditional public schools (Rofes, 1998; Hartley, 1998).

Privatization efforts have been institutionalized in almost every state. Thirty-three states and the District of Columbia have charter school laws, 29 states support public school choice within some or all districts in the state, three states have enacted tax credit programs, and two states have created publicly sponsored full school choice programs. There are also three cities with publicly sponsored full school choice (Shokraii & Youssef, 1998; Clinton 1998). Nationwide, the U.S. Department of Education estimates that there are more than 1,100 charter schools in operation serving over 200,000 students (Office of Educational Research and Improvement, 1998). In addition, President Clinton has proposed expanding the number of charter schools to 3000 by the year 2000 (AACTE, 1998a).

Despite the relatively fast spread of these reforms (only one charter school existed in 1992), the constitutionality of using public funds for private or semiprivate education efforts has not been firmly established. Constitutional concerns are especially strong regarding vouchers (private school choice) and tuition tax credits. The Wisconsin Su-

preme Court has ruled that the Milwaukee Parental Choice Program, which allows parents to use tuition vouchers at religious schools, is constitutional (Steinmetz, 1998). Conversely, Justice D. Brock Hornby, chief justice of the U.S. District Court in Maine ruled that parents may not send their children to private religious schools (in this case, a Roman Catholic school) at taxpayer expense (New York Times News Service, 1998). Similar challenges are before the Supreme Court of Ohio, (Gold, 1998), and the supreme courts in Arizona and Vermont (New York Times News Service, 1998). According to Clint Bolick, the litigation director at the Institute for Justice, "odds are awfully good that the U.S. Supreme Court will be dealing with one of these cases in the next year" (New York Times News Service, 1998). On August 31, the Milwaukee school voucher plan currently in effect was appealed to the U.S. Supreme Court. Both the Institute for Justice, which supports the voucher program, and People for the American Way, which opposes vouchers, have asked the court to review the case. The Supreme Court has yet to decide if it will hear the case, but such a decision is expected soon after the Court begins its 1998-99 session (Weiner, 1998).

In addition to efforts to use public money for education at private or semi-private schools, private individuals, businesses, and organizations have begun creating scholarship trust funds to enable students to transfer from public to private schools. A self-described conservative Christian organization, the Citizens for Excellence in Education (CEE), which represents a quarter of the nations 90,000 school board members, will soon launch a campaign called Rescue 2010, which will attempt to move 20 million Christian children from public schools to 235,000 new private schools located in churches (Lake, 1998). Groups like CEE are hoping to tap the more than $150 million dollars private businesses and individuals have saved into nonprofit scholarship funds designed to help finance private education for low- and middle-income children (Lake, 1998). The Edgewood school district in San Antonio, Texas, will likely lose more than $5 million dollars this year as 912 children leave the district for private schools after receiving scholarships from another conservative Christian group, Children's Educational Opportunities (Lake, 1998). Though private in nature, these efforts can benefit from tax law changes like the tax credit enacted in Arizona. Because efforts such as these do not use public funding, they are not open to the same court challenges as voucher programs, though the Arizona tax credit is facing legal challenges.

Methodology

Through a search of the StateNet database (a private database of all bills introduced during the current session in every state legislature and Congress), 452 bills were identified as related to choice, vouchers, tax credits, and charter schools. Home school bills were not included in this survey because of the noninstitutional nature of home schools, though such legislation would have accounted for another 315 bills. The bills identified were categorized by reform, content, sponsor, sponsor's party affiliation, party control of legislature and governor's office, and final status (passed, failed, died, or vetoed). Twenty-nine states allowed carry-over bills from the 1997 session to the 1998 session, which were considered in this analysis. At the time of writing, 42 states had adjourned the 1998 legislative session, one state (California) was about to adjourn, and seven other states (Delaware, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin) were still in session. Six states did not have a regular session in 1998 (Arkansas, Montana, North Dakota, Nevada, Oregon, and Texas). In addition to the StateNet database search, background research was conducted through a review of available literature and a survey of newspapers in relevant states (see References for details).

Overview of Legislation

Charter Schools

Three states enacted charter school legislation during the 1998 session: Idaho, Utah, and Virginia though the constitutionality of the legislation in Utah has been challenged in court by the Utah School Boards Association (Utah School Boards Association v. Utah State Board of Education, Third District Court). Also in this session, Maryland and Maine passed legislation creating committees to examine charter school options for the future. Eleven of the 17 states that currently have no charter laws had legislation introduced that would have established charters, and only Alabama, Kentucky, and West Virginia did not have charter legislation introduced this session (Montana, North Dakota, and Oregon were not in session).

Party Affiliation

Though the majority of charter legislation was Republican sponsored, Democrats still introduced almost 40 percent of all charter bills. The most obvious differences regarding party affiliation appeared when looking at bill passage. The states that passed legislation creating charter schools this session all were controlled by Republicans. In Idaho and Utah, both houses of the legislature and the governor were Republican, and in Virginia the Senate and governor's office were controlled by Republicans. In Maine, where the legislature was controlled by Democrats, Rep. Barth (R), introduced legislation that would have created charter schools, but that measure failed to be reported out of committee. The measure establishing a committee to examine charter schools and choice, which was enacted, was introduced by a Democrat, Senator Jenkins. In Maryland, which has a Democratically controlled legislature and governor's office, the only charter bill introduced was the bill to create a charter school committee.

Tax Credits

The tax credit legislation which passed in Arizona (House Bill 2074) created a $500 tax credit for donations to nonprofit tuition organizations, and a $200 tax credit for fees paid to support extracurricular activities in public schools. The bill was signed into law April 7, 1997, and will provide an estimated $8 to $50 million to tuition granting organizations (Lake, 1998). The law has been challenged in the Arizona Supreme Court (Kotterman v. Kilian CV-97-0412-SA), but the court has not yet issued a decision. A virtually identical bill, (House Bill 1075) was introduced in Maryland during the '98 session, but never made it out of committee. Legislation in Illinois (House Bill 999), which would have created a tax credit of up to $500 for families spending in excess of $250 on tuition, book fees, and lab fees at public or private K-12 schools, was vetoed by Governor Edgar, citing its estimated $100 million annual cost (Illinois Governor's Press Office, 1998). The Colorado tax credit initiative would create private school tuition tax credits of up to 50 percent of the amount the state currently spends for each public school student (Bingham, 1998). This initiative has been placed on the November 3 ballot.

Party Affiliation

The tax credit legislation in Arizona and Maryland was introduced by coalitions of Republicans. In Arizona, where the legislation passed, both houses of the legislature and the governor were Republican, while in Maryland, as previously noted, the House, Senate, and Governor were Democrat. Contrary to the broader trend, the Illinois tax bill was sponsored by a Democrat (Kevin McCarthy), passed a House controlled by Democrats, a Senate controlled by Republicans, and was consequently vetoed by a Republican governor.

Case Examinations: Arizona, Colorado, Utah, and Virginia

Arizona Tax Credits

Arizona House Bill 2074 was first read on January 13, 1997 and was sponsored by a coalition of Republican lawmakers: Representatives Anderson, Brimhall, Burns, Cooley, Griffin, Jarrett, Johnson, McGibbon, Schottel, and Weiers. Representatives Johnson, McGibbon, and Weiers were on the Education Committee, and Representative Schottel was the committee chair. Representative Burns had individually sponsored identical legislation during the previous legislative session (House bill 2523, 42nd Legislature), but the bill failed initially in the Ways and Means Committee, and later on the House floor (Arizona Legislative Information Service, 1998).

House bill 2074 was simultaneously assigned to three committees: Ways and Means, Education, and Rules. In each committee, the bill passed largely along party lines, with Republicans generally supporting the bill and Democrats almost unanimously opposing it. The one exception was the Ways and Means committee, where the bill was considered when all the Democrats were absent. The bill passed the house with 30 of 36 Republicans and one Democrat supporting the measure. The vote was similar in the Senate, with Republicans generally supporting the measure (three Republicans opposed the measure), and Democrats generally opposing it (one Democrat voted for the measure).

The bill created intense and polarizing public debate, with supporters calling the legislation "revolutionary" and opponents claiming the legislation was really a voucher system (Mattern, 1997). Opponents of the bill were characterized as union sympathizers (Flake, 1997) and supporters were seen as proponents of vouchers for wealthy children already in private schools (Lybeck, 1997). Lisa Graham Keegan, Arizona State Superintendent of Education, who was instrumental in passing charter school legislation when she was in the legislature (Cohen, 1998), strongly supported the initiative. In editorial letters to the Arizona Republic, she both applauded the measure and strongly criticized the Arizona Education Association (AEA) for fighting the law (Keegan, 1997a; Keegan, 1997b). In May 1997, the Arizona Education Association, in alliance with a group called Citizens for Fair Taxation, attempted to overturn the law through a ballot initiative, but by July the effort had not garnered the necessary 56,481 signatures so the AEA decided to join with the Arizona School Boards Association and other organizations in filing a lawsuit challenging the constitutionality of the law. The case, Kotterman v. Kilian, challenges the constitutionality of the tax credit law on the grounds that it provides funding for private and religious education, which is prohibited by the state's constitution. The constitutional claim is based in two sections of the Arizona constitution (Pickrell, 1998):

> Article IX, Section 10. No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school, or any public service corporation;
> Article XI, Section 7. No sectarian instruction shall be imparted in any school or State educational institution that may be established under this Constitution.

The court heard arguments in this case on December 18, 1997 and was expected to make a ruling in early spring (Shokraii & Youssef, 1998), but as of September 1998, no ruling had been issued. Because Tom McGovern is a candidate for the office of Attorney General and was also a participant in the case, it is possible that the court is waiting until after the fall elections to issue a decision.

Because the Arizona case could have broad implications for similar reform efforts, groups on both sides of the issue became involved. In addition to the participation of local groups in the case, a number of national organizations interested in the topic became active in the debate. These groups include: the National Education Association, the National School Boards Association, the Institute for Justice, and People for the American Way.

Colorado Tax Credit Ballot Initiative

The Colorado ballot initiative, Amendment 17, is unique. It is the only school choice initiative to make it to the ballot this year and if passed would provide a significant tax credit to parents of students attending private schools. The ballot initiative in Colorado would provide to parents whose children attend private schools a tax credit equal to no less than 50 percent of the average per-pupil expenditures in the public schools (amounting to $3131.50 using 1995-96 figures), or not less than 80 percent of tuition costs, whichever is less. Parents whose children are home schooled may also receive a tax credit for curricular and educational material. Though the tax credit would be available to public school parents, the types of expenditures and amount of tax credit that would be allowed is not delineated. Funding for the tax credit would be drawn from the "Educational Opportunity Fund", a pool of money to be created by the legislature and funded by transferring money from the public schools to the Fund on a per-pupil basis. The tax credit would be awarded initially to parents of children attending private schools, using the following priority basis:

1. Parents of non-public school students who transferred from a public school district performing under the state average on state board of education approved assessments.
2. Parents of non-public school students who transferred from any public school district.
3. Low income parents of students in non-public schools.
4. All parents of students in non-public schools.
5. Parents of public school and home schooled students.

The fund would have to provide tuition credits for 49,000 children already in private schools before any of the credit would be available to public school and home school families.

The initiative's principal supporter is Coloradan's for School Choice...for All Kids Inc., chaired by Steve Schuck, who until August 11, 1998, also chaired the conservative policy organization, the Independence Institute. Concerns about tax status and funding transfers from the Independence Institute to Coloradans for School Choice resulted in Schuck's resignation as chairman of the Independence Institute (McPhee, 1998). Opponents of the tax credit initiative have formed a coalition of more than 20 groups, including Coloradans for Public Schools, the National Education Association, the Colorado Education Association, the PTA, the League of Women Voters, and the AntiDefamation League (Bingham, 1998). The tone of the debate in Colorado has been similar to that in Utah and Arizona, with supporters claiming they are fighting the education monopoly of the NEA and opponents claiming the voucher plan will destroy public education (Schuck & Wilson, 1998; Ausfahl, 1998).

Another interesting aspect of this debate stems from the ballot initiative process. The amendment to the constitution is approximately two typed pages in length; however, the voters will base their vote on a 12 line summary of the whole. In the summary, the prioritizing of funding listed above is presented as "establishing priorities for eligibility," and the transfer of funds from the schools to the opportunity fund on a per student basis is not mentioned, but there is a line, "prohibiting reductions in current per-student public school expenditures as a result of the measure or as a result of the transfer of students to non-public schools" (Lincoln, 1998). Since voters will have to base their vote on what they have heard about the initiative prior to voting and on the summary itself, the wording of the summary could become a key issue in the passage of the amendment. If passed on November 3, the tax credit would take effect in 1999.

Utah Charter Schools

The Utah legislation creating charter schools, House Bill 145 (The Utah Charter Schools Act), was introduced on January 29, 1998 and signed by Governor Mike Leavitt on March 20, 1998. The bill, sponsored by Republican Representative Brian Allen, passed the House on February 27 by a two to one margin. The Senate received the bill the same day, voting 15 for and 9 against with 5 not voting. The minimum votes necessary for a bill to pass in the Senate is 15, so the vote was much closer than it first appears (Toomer-Cook & Spangler, 1998). At the time, the entire Utah government was strongly Republican, with 55 of 75 House members, 20 of 29 Senate members, and the governor all Republicans (StateNet, 1998).

In 1990, the Utah state legislature began the reform of school governance in Utah when it authorized creation of the Task Force for Strategic Planning, a group charged with developing and monitoring a five year strategic plan for public education. Among the goals of the task force were: "redesign, as is necessary, of the educational system to achieve the objectives of the Plan; promote school autonomy in meeting the objectives of the state through decentralization of authority to local sites; align the organization of the education system with outcome-based accountability measures...; develop a system of client choice; and strengthen the school-business partnership" (Johnson, 1994). Attempts to achieve these goals can be seen in many of the reforms

enacted since 1990 which ultimately resulted in the Utah charter schools created by HR 145.

This bill was the result of work done by the Centennial Charter Schools Task Force, which was cochaired by Representative Brian Allen. The work of the task force built on previously established schools known as Modified Centennial Schools (MCS) which were themselves an extension of the Site-Based Decision Making Pilot Program of 1991 (SB 30: 1991). The Site-Based Decision Making Pilot Program was designed to explore the feasibility of site-based governance, and 16 schools from 11 districts were chosen to participate. The program found that site-based management resulted in an increased sense of participant ownership for performance, though problems in delineating decision making responsibilities and with start-up costs were also indentified (Johnson, 1994). The MCS program broadened this site-based management policy by significantly changing school governance. Modified Centennial Schools are run by a board of directors made up of an equal number of parents and school employees, with the principal as chair. The board had the power to address curriculum, discipline, and school climate issues, but did not have fiscal autonomy until 1996, when House Bill 56 expanded the program. The bill allowed 10 selected Modified Centennial Schools to become "Centennial Schools," and receive funding directly. The Centennial Schools were also exempted from many state and local board rules and policies, making them very similar to the charter schools found in other states (Cortez, 1998; Toomer-Cook, 1997; WestEd, 1996).

Eight charter schools, approved by the State Board of Education, are allowed by the 1998 Utah Charter Schools Act, and $500,000 dollars were appropriated to the State Board of Education for funding of these schools. Though creation of three charter schools by the start of the 98-99 school year was allowed by the legislation, only two schools have been approved for the 1998-1999 school year: Tuacahn High School for the Performing Arts and Jean Massieu School for Deaf Children (Utah Department of Education, 1998). Five more may be named by November (Groutage, 1998). Because the legislation designates the State Board of Education as the chartering authority, the Utah Schools Boards Association (USBA) and the Utah School Superintendents Association (USSA) have asked the Utah 3rd District Court to give an interpretation of the Utah Constitution regarding the charter school governance. The groups state that while they do not oppose charter schools as a concept, they believe that the Utah Constitution requires Board of Education control of K-12 education (Toomer-Cook & Cortez, 1998; Bogdanowicz, 1998), and that the Department of Education does not have governing authority. The basis for the claim lies in Article 10, Section 3 of the Utah constitution, which specifically states that K-12 education governance should rest with a Board of Education (Gleave, 1998):

> The general control and supervision of the public education system shall be vested in a State Board of Education. The membership of the board shall be established and elected as provided by statute. The State Board of Education shall appoint a State Superintendent of Public Instruction who shall be the executive officer of the board (Utah Constitution, 1998).

The case has been heard by the court, though a decision has not been rendered. Since the decision will be reached at the trial court level, it is likely to be appealed to the Utah Supreme Court for final adjudication no matter which side is supported by the judgement.

Virginia Charter Schools

Charter school legislation in Virginia had been proposed for the previous four years. In 1994, Senator John Brandon Bell II (R), Representative Mitchell Van Yahres (D), and Representative Phillip Hamilton (R), had all proposed the creation of "Commonwealth Charter Schools." Though legislation creating charter schools was introduced in each session since 1994, the legislation did not make it out of committee until the 1998 session when House Bill 543 and Senate Bill 318 were passed. In 1995, the legislature established a committee to examine the issue of charter schools through House Joint Resolution 551 and Senate Joint Resolution 334. These resolutions were both proposed by Democrats: Senator Elliot Schewel and Representative Paul Councill. The nine member committee (five House members appointed by the Speaker, and four senators appointed by the Senate Committee on Privileges and Elections) was charged with providing a recommendation on the efficacy of charter legislation based on: charter laws in other states; actual daily operations of charter schools; the focus of organizing groups; constitutional issues in Virginia and other states; funding issues; and other components of charter legislation including, but not limited to, organizer eligibility, application process, charter eligibility, sponsoring authority, approval authority, governance, employment requirements, administration, limitations in number, contract terms and conditions, waiver of requirements, curricula, admissions, due process, accountability, and the role of the state Board of Education (Councill, 1995).

House Bill 543, sponsored by Republican Delegate Phillip Hamilton, and Senate Bill 318 sponsored by Republican Senator Warren Barry, were introduced on January 20, 1998. The bills were referred to the Committee on Education and Committee on Education and Health respectively. The Senate and House both took turns rejecting the other chamber's bill and insisting on their own bill. To resolve the differences, a conference committee was appointed on March 12, consisting of Senators Barry (R), Saslaw (D), and Lucas (D); and Delegates Hamilton (R), Councill (D), and Christian (D). The conference committee recommended

its own substitute which quickly passed both chambers. Even though the language was identical, the bills continued through the chambers separately and resulted in slightly different vote tallies. The Senate bill tallies are reported here since the Senate bill was chaptered more recently, and so takes precedent over the House bill (Varner, 1998). The vote in the Senate on SB 318 was 30 in favor and seven against, while the House vote was 66 in favor and 27 against (Legislative Information Service, 1998). At the time of the vote, the Virginia Senate was controlled by Republicans (21 Republicans, 19 Democrats), the House was controlled by Democrats (50 Democrats, 48 Republicans, one vacancy, and one independent) and the governor was a Republican.

No groups have filled any constitutional claims against the measure at this time and it seems unlikely that such claims will be made since Virginia's constitution is quite flexible with regard to school governance and funding, which are two of the most common challenges brought against charter legislation. Article VIII, Sections seven, nine, and ten of the Constitution relate most directly to the constitutional issues. Section seven identifies the local school boards as the entity responsible for the supervision of schools in each district, and the Virginia legislation designates the school boards as the final authority regarding charter approval and renewal. Section nine allows the General Assembly to establish "any educational institutions which are desirable for the intellectual, cultural, and occupational development of the people of this Commonwealth", and Section ten allows funding "for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning..." (Virginia Constitution, 1998).

Although in 1995 the people of Virginia were characterized as "more divided over the issue of charter schools than many other states" (Mauhs-Pugh, 1995), by 1998 the debate seemed much less divisive and indeed, minimal. A survey of editorial articles in Virginia newspapers (*Richmond Times*, *Virginia Pilot*, and *Roanoke Times*) found a small number of generally "polite" articles. This stands in direct contrast to the debates held in Arizona, Colorado, and Utah newspapers regarding the reforms enacted in those states.

Conclusions

It seems likely that the effort to enact charter legislation in the remaining 17 states (Alabama, Iowa, Indiana, Kentucky, Maine, Maryland, Missouri, Montana, New York, North Dakota, Nebraska, Oklahoma, Oregon, South Dakota, Tennessee, Vermont, Washington, and West Virginia) will continue. Currently, the only state prefiling for the next legislative session is Kentucky, which is also the only state without a regular legislative session in 1999, but no charter legislation had been introduced as of October 1, 1998. Charter legislation may also get a boost as legislators focus on charter schools as a compromise between current education structures and voucher programs. In New Mexico this year, Governor Gary Johnson (R) focused his reform efforts on increasing charter schools since members of the Democrat controlled legislature were not open to the idea of vouchers (Fecteau & Roberts, 1998).

Efforts of national groups (such as the American Legislative Exchange Council, Center for Education Reform, Center for Policy Studies, Center for School Change, Charter Friends National Network, Christian Coalition, Heartland Institute, Heritage Foundation, Hudson Institute, Progressive Policy Institute, and the Vaughn Next Century Learning Center) to enact privatization legislation in state legislatures will continue. The Heritage Foundation and the American Legislative Exchange Council (ALEC) are especially active in the political arena and provide on-line instructions for legislators interested in the privatization of education. The Heritage Foundation publishes *Issues '98: The Candidate's Briefing Book*, "a handbook for conservative candidates" which states that the current education system should "...be replaced with a diverse and flexible system open to all children but privately operated" (Shokraii & Barry, 1998). The American Legislative Exchange Council provides model bills for legislators to use in privatizing education, including bills on charter schools, vouchers, and open enrollment (ALEC, 1998). In fact, the Utah charter schools legislation passed this session directly parallels ALEC model legislation, with five of the six "purposes" for charter schools stated almost identically. At the same time, national groups such as the American Federation of Teachers, the National Association for the Advancement of Colored People, the National Education Association, the National Parent Teacher Association, the National School Boards Association, and People for the American Way are likely to continue their opposition to such efforts. The National School Boards Association and the National Parent Teacher Association have been involved in an anti-voucher campaign designed to halt Congressional plans to start school voucher programs. In addition, the National Association for the Advancement of Colored People, and People for the American Way have a separate anti-voucher program with African-American ministers (Cahir, 1998).

It is possible that privatization efforts will come to the forefront in Maine and Maryland if the committees established last session report favorably on charter schools. In addition, Florida gubernatorial candidate Jeb Bush and his running mate, Education Commissioner Frank Brogan, are actively campaigning for private school vouchers as part of their larger education plan for Florida's schools (AACTEb, 1998). A campaign to help elect Texas candidates who support vouchers has been launched by a group calling itself

"Putting Children First." If successful, vouchers could become law in Texas since Governor George W. Bush supports such privatization efforts (National School Boards Association, 1998).

Many legal issues surrounding privatization efforts could be resolved in 1999 as well. If the Supreme Court agrees to hear the Wisconsin case (Jackson v. Benson) and if they offer a definitive ruling, the legislative landscape surrounding voucher efforts would be radically altered. Should the court uphold the constitutionality of vouchers, or provide a test of constitutionality, there would likely be a great increase in voucher activity as legislators previously unsure of the viability of vouchers began to take action. Should the court rule vouchers unconstitutional, legislative efforts to privatize education would then be forced to shift into other arenas of privatization such as tax credits or tuition scholarships. Even if the issue is resolved at the federal level, state constitutional issues will remain. As evidenced by the cases in Arizona, Utah, and Virginia, state constitutions vary widely in the language regarding educational responsibilities, and privatization and voucher programs would have to be carefully tailored to fit within the constitutional boundaries of each state. Such careful design appears to have been successful in Virginia, while the constitutionality of the legislation designed in Utah and Arizona is less certain. Utah's charter school legislation will probably not complete the appeal process next year, but a decision should be reached in the Arizona case.

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Appendix

Charter schools: publicly funded schools that operate under charters issued by a governing authority (either state or locally controlled) to an individual or group by a specified authority and which operate outside of the traditional public school bureaucracy.

Choice: the term "choice" will be primarily used to describe legislation and regulation that allows parents to choose what public school their children will attend. They may choose between traditional public schools, charter schools, or magnet schools. There are three types of choice:
* Limited choice: choice that is limited in some manner by the governing authority, typically location;
* Unlimited choice: choice among public schools that is not limited by the governing authority.
* Full school choice: choice among public and private schools (because legislation that would allow students to attend private schools at public expense must in some way fund that attendance, "private school choice" would also be classified under "vouchers". Similarly, vouchers that would allow students to attend only public schools would fall under "choice").

Magnet schools: publicly funded schools that offer specialized programs designed to attract students from a variety of locations. Often used to address segregation issues.

Privatization: any action that results in the transferal of students and/or resources from public schools to private schools.

Vouchers: monetary awards that allow parents to send their child to any private school. There are four types:
* Limited vouchers: vouchers with limitations such as on family income or location.
* Unlimited vouchers: vouchers with no income, geographic, or other restrictions.
* Tax credits: tax "vouchers" that allow money used for school tuition to be tax deductible or used as a tax credit
* Other: may encompass "private school choice" or other plans to publicly fund private schools, such as some home school plans, scholarships, or monetary credits.

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